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In The

Supreme Court of the United States

October Term, 1979

No. 79-766

CURTIS WILLIAM McGHEE, JR.,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the Iowa Supreme Court is adequately set out as Appendix A of the petition.

—o—

JURISDICTION

The jurisdictional requisites are adequately set forth in Par. 2, at page 2 of the petition.

QUESTIONS PRESENTED

1. Whether petitioner's Fifth Amendment right to silence was violated when an incriminating statement was taken from him during custodial interrogation without the police having first advised him of his right to terminate questioning at any time?

2. Whether a minor in custody has the right to a speedy trial which attaches when a judicial determination is made that probable cause exists to believe he has committed an offense?

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STATEMENT OF THE FACTS

The Facts necessary for a determination of the propriety of review by writ of certiorari are adequately set out in the Statement at Page 3 of the Petition.

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ARGUMENT

I.

Petitioner cites as error the admission against him of statements made by him to police officers. Petitioner asserts that he had not been sufficiently warned of his constitutional rights as required by *Miranda v. Arizona,* 384 U. S. 436 (1966), in that he had not been explicitly told that he could stop the questioning at any time. Petitioner

further asserts that since there are some states that require this warning while others do not, this Court should determine if such a warning is constitutionally required. The State believes review by this Court is unnecessary.

While, as noted, in the petition, some states have stated that a warning that a suspect can stop the questioning at any time should be separately and specifically given, *Micale v. State,* 76 Wis. 2d 370, 251 N. W. 2d 458 (1977); *State v. Riddick,* 291 N. C. 399, 230 S. E. 2d 506 (1976), this is not a requirement of *Miranda. United States v. DiGiacomo,* 579 F. 2d 1211, 1214 (10th Cir. 1978); *State v. McGhee,* 280 N. W. 2d 436 (Iowa 1979). Nor does it add any right that is not already given to a suspect under *Miranda.* In *Miranda,* the Court stated:

> Congress and the States are free to develop their own safeguards for the privilege, so long as they are fully as effective as those described above in informing accused persons of their right of silence and *in affording a continuous opportunity* to exercise it.

Miranda v. Arizona, 384 U. S. at 490. Iowa and most other jurisdictions have determined that the lack of a warning that a person can stop questioning "goes to the voluntariness of the later statements." *State v. McGhee,* 280 N. W. 2d 436, 442 (Iowa 1979). *See also Mock v. Rose,* 472 F. 2d 619 (6th Cir. 1972), cert. denied, 411 U. S. 971 (1973); *State v. Parker,* 44 Ohio St. 2d 172, 339 N. E. 2d 648 (1975); *People v. Washington,* 115 Ill. App. 3d 318, 253 N. E. 2d 677 (1969).

Recently in *North Carolina v. Butler,* — U. S. —, 99 S. Ct. 1755 (1979), this Court refused to attach any more *per se* rules to the *Miranda* requirements. In that case North Carolina held that an explicit waiver of the right

to counsel was required. In reversing this Court stated that the waiver of right to counsel was to be determined from all the facts and circumstances, and the Court could see no reason to discard that standard and replace it with an inflexible per se rule.

While the instant case differs in that it deals with informing the suspect of his rights, the standard should likewise not be changed. The requirement remains that a suspect be fully informed of his rights and a determination be made that he understands those rights. This latter determination may be made easier by informing a suspect that he has a right to stop questioning, but it is in no way changed. It is required that the petitioner be told of his right to remain silent. He must understand this right. If he does, it adds nothings to tell him he can stop talking because he understands that already. To apply a *per se* requirement would merely impose on the states a rule which might or might not aid in that determination. Such a rule should not be imposed and is not constitutionally mandated.

It should also be noted that Petitioner in this case showed his understanding that he could terminate the questioning. As shown in the recital of facts in the petition, prior to making any incriminating statements Petitioner did terminate the questioning. He stated he wanted to think about it. He was not interrogated further for three hours and was then given new warnings. It was thus made clear to him that the questioning would stop at his request.

The Petitioner has not shown adequate grounds to justify the review by this Court pursuant to a Writ of Certiorari.

II.

Petitioner asserts that the Iowa Supreme Court application of the Iowa speedy trial statute, § 795.1, Code of Iowa (1977), violated his constitutional right to a speedy trial under the Sixth Amendment, as applied to the states by the Fourteenth Amendment. Petitioner was first charged as a juvenile. He was then transferred to be tried as an adult in the Iowa District Court. Petitioner asserts that the computation of time in which an indictment must be found and a trial held must begin at the time he was initially brought into the juvenile system. The Iowa Court held that the computation of time, *under the Iowa statute,* began when petitioner was transferred to the district court from the juvenile court. The Iowa court made no determination of petitioner's Sixth Amendment right. And although it has previously stated that the Iowa statute was intended to implement the Sixth Amendment, *State v. Satterfield,* 257 Iowa 1193, 136 N. W. 2d 257 (1965), it has been applied more stringently. Iowa Courts have held the statute mandates dismissal after the statutory deadline absent a showing by the prosecution of good cause, *State v. Sassman,* 226 N. W. 2d 808 (1975), while the Sixth Amendment guarantee is enforced by a balancing of the reason for and the length of the delay against the prejudice to the defendant caused by the delay and the assertion of his right. *Barker v. Wingo,* 407 U. S. 514 (1972). The State urges that petitioner has therefore not presented a Sixth Amendment question upon which certiorari should be granted.

The State also believes that the Sixth Amendment does not require that the Iowa Statute be applied to juve-

niles just as it would be applied to adults. While it may be assumed that the Sixth Amendment applies to juveniles it is not required that the statutory implementation of that amendment set out in state criminal law be applied identically to state juvenile proceedings. Neither of the leading cases in this area make such a requirement. *See, In Re Gault,* 387 U. S. 1 (1967); *In Re Winship,* 397 U. S. 358 (1970). *Gault* and *Winship* both stated that the applications of the due process clause set out in those cases would "not compel the states to abandon or displace any of the substantive benefits of the juvenile process." *In Re Gault,* 38 U. S. at 31; *In Re Winship,* 397 U. S. at 367. Neither would application of the Sixth Amendment balancing test required by *Barker v. Wingo* cause abandonment of the benefits of the juvenile process. However, the application of the Iowa speedy trial statute in the manner asked by petitioner

> [W]ould not only disrupt the potential benefits of the juvenile proceeding, but would be to apply the 30-day period simultaneously to both juvenile and, in the event of a waiver, district court proceedings. Such an application would be beyond the scope of equal treatment underlying *Gault* and could place unreasonable time constraints on proceedings.

State v. McGhee, 280 N. W. 2d at 439. A rush to ensure that the proceedings were concluded in 30 days would inevitably lead to some unwise transfers or to unwise indictments. This cost, even if the number of such transfers is minimal, is too great in light of the fact that if any actual prejudice does accrue to a juvenile due to his lack of speedy trial or indictment he can seek relief under the federal constitution regardless of the statutory interpretation. His guarantee to due process of law is not lessened by the use of an additional procedure designed to ensure greater protection. As noted in *United States v. Marion,* 404 U. S. 307, 313 (1971), the essential ingredient of the speedy trial right is orderly expedition not just speed.

It should also be noted that the Iowa speedy trial rule has now been changed, and the time for indictment and trial is computed from the time of arrest not from the time a person is held to answer. Iowa R. Crim. P. 27 (2) (a) Ch. 813, Code of Iowa (1979). The Iowa Court in *McGhee* expressly reserved the question of how the new rule would be applied to juveniles who are transferred to district court. *State v. McGhee,* 280 N. W. 2d at 438 n. 1.

The state therefore urges that the petitioner of certiorari has not stated sufficient grounds upon which to obtain review and the writ should be denied.

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CONCLUSION

The Writ of Certiorari should be annulled and the Petition dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Thomas D. McGrane, Assistant Attorney General for the State of Iowa, hereby certify that on the 19th day of December, 1979, I mailed three (3) copies of Brief for Respondent in Opposition, correct 1st class postage prepaid to:

Alfredo G. Parrish
906 Savings & Loan Bldg.
Des Moines, IA 50309

I further certify that all parties required to be served have been served.

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